

No. **73-157**

MICHAEL RODAK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1973

ASTOL CALERO-TOLEDO, Superintendent of Police, EDGAR R.
BALZAC, Administrator of the General Services Adminis-
tration of the Commonwealth of Puerto Rico,

Appellants,

v.

PEARSON YACHT LEASING Co.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF PUERTO RICO

JURISDICTIONAL STATEMENT

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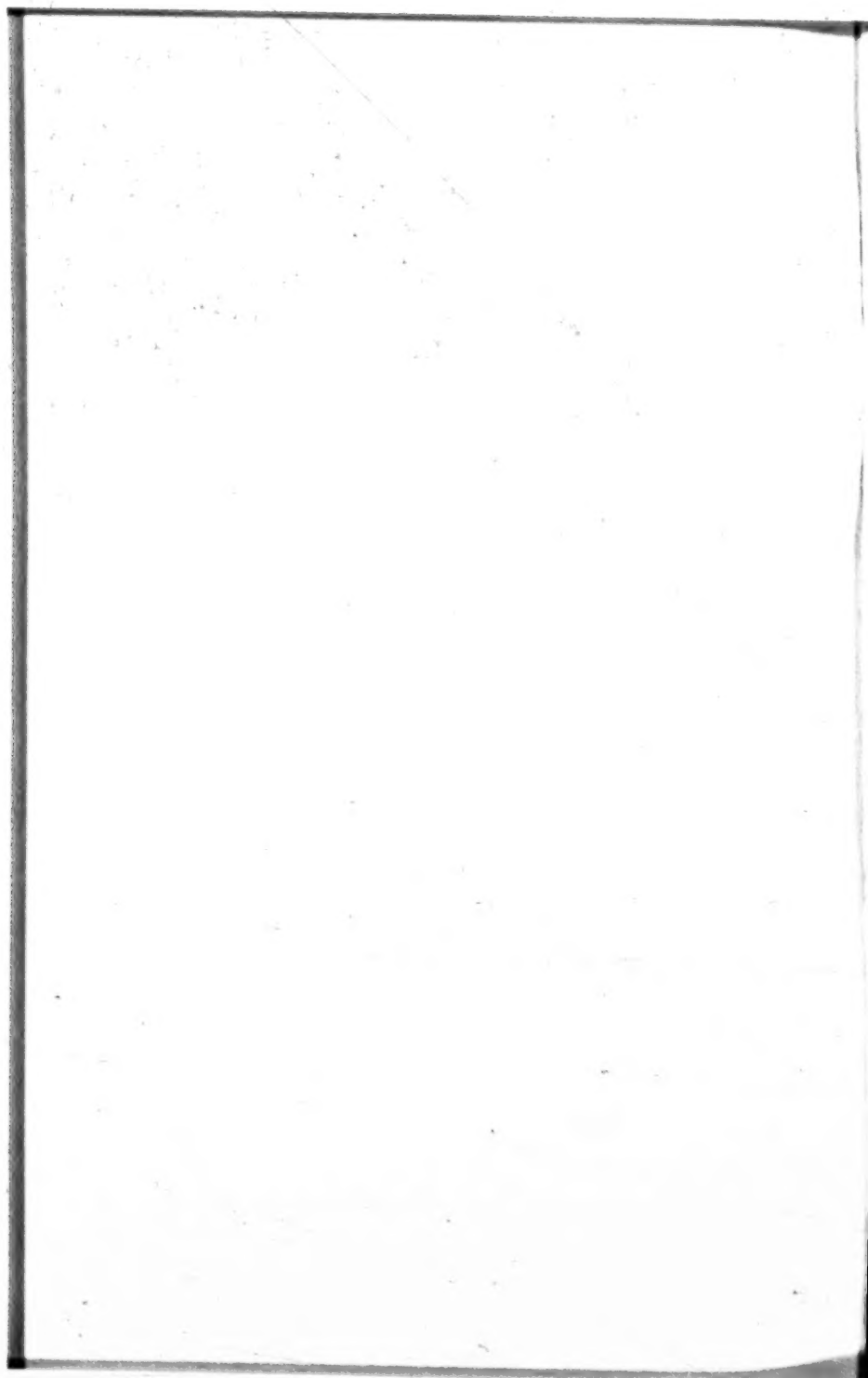
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INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
The Questions Are Substantial	6
Summary of Appellants' Position	6
The Court Below Erred in Holding that Seizure without Notice Deprived Pearson of Property without Due Process of Law	9
The Court Below Erred in Holding that Pearson Suffered a Taking of Property without Just Compensation	11
Conclusion	18
Appendix A	19
Appendix B	33
Appendix C	37

CITATIONS

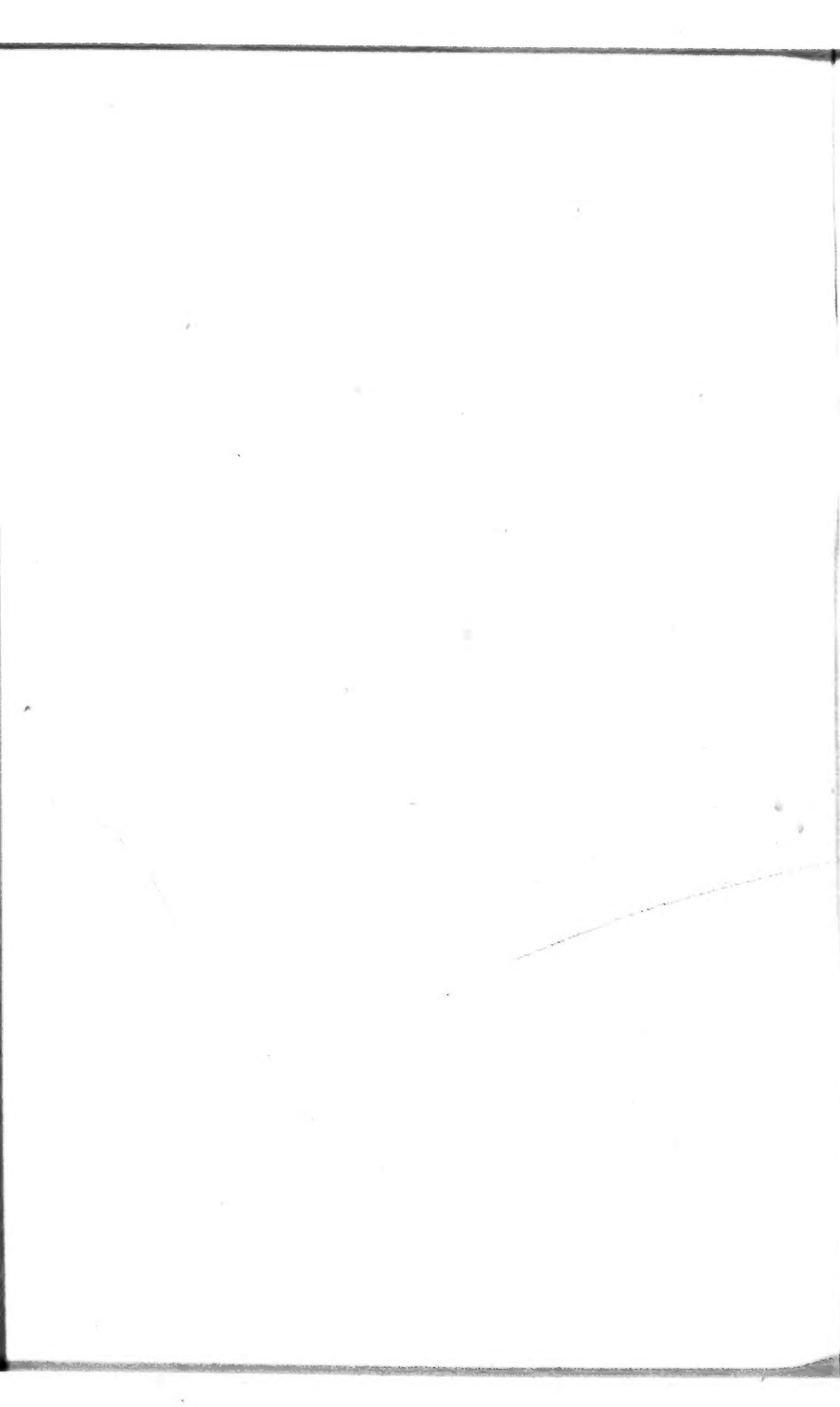
Cases

<i>Americana of Puerto Rico, Inc. v. R. Kaplas</i> , 368 F.2d 431 (3rd Cir. 1966)	2
<i>Ashwander v. T.V.A.</i> , 297 U.S. 288 (1935)	17
<i>Bonet v. Texas Co.</i> , 308 U.S. 463 (1940)	15
<i>Burge v. United States</i> , 342 F.2d 408 (9th Cir. 1965), <i>cert.</i> <i>denied</i> 382 U.S. 829 (1965)	10
<i>Commonwealth v. Superior Court</i> , 96 D.P.R. 843, 96 P.R.R. 822 (1969)	16
<i>Dobbin's Distillery v. United States</i> , 96 U.S. 395 (1878) ...	12
<i>Downs v. Porrata</i> , 75 P.R.R. 572 (1954)	9
<i>England v. Bd. of Medical Examiners</i> , 375 U.S. 411 (1964)	15
<i>Fornaris v. Ridge Tool Co.</i> , 400 U.S. 41 (1970)	15

	PAGE
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	6, 7, 9, 10
<i>Garcia v. Superior Court</i> , 91 P.R.R. 146 (1964)	16
<i>Goldsmith Jr.—Grant Co. v. United States</i> , 254 U.S. 505 (1921)	12, 13
<i>Gore v. United States</i> , 357 U.S. 386 (1958)	13
<i>McKeehan v. United States</i> , 438 F.2d 739 (6th Cir. 1971) ..	12
<i>Metro Taxi Cabs, Inc. v. Treasurer</i> , 73 D.P.R. 171, 73 P.R.R. 164 (1952)	14, 15
<i>Mora v. Meijas</i> , 115 F.Supp. 610 (D.P.R. 1953)	2
<i>Mora v. Meijas</i> , 206 F.2d 550 (1st Cir., 1953)	2
<i>Mullane v. Central Hanover Tr. Co.</i> , 399 U.S. 306 (1950) ..	11
<i>N.L.R.B. v. Jones & Laughlin Steel Corp.</i> , 301 U.S. 130 (1936)	15
<i>Ochoteco v. Superior Court</i> , 88 D.P.R. 517, 88 P.R.R. 500 (1963)	14, 15
<i>The Palmyra</i> , 25 U.S. (12 Wheat.) 1 (1827)	12
<i>Pa. Public Util. Comm'n v. Pa. R.R. Co.</i> , 382 U.S. 281 (1965) ..	2
<i>Re One 1965 Ford Mustang</i> , 105 Ariz. 293, 463 P.2d 827 (1970)	15
<i>Reetz v. Bozanich</i> , 397 U.S. 82 (1970)	15
<i>Robinson v. Hanrahan</i> , 409 U.S. 38 (1972)	11
<i>Rorick v. Bd. of Comm'rs of Everglades Drainage Dist.</i> , 307 U.S. 208 (1939)	2
<i>Stainback v. Wo Hock Ke Lok Po.</i> , 336 U.S. 376 (1949) ...	2
<i>Suhomlin v. United States</i> , 345 F.Supp. 650 (D.Md. 1972) ..	12
<i>United States v. One 1971 Buick Riviera</i> , 463 F.2d 1168 (5th Cir. 1972)	12
<i>United States v. One 1967 Ford Mustang</i> , 457 F.2d 931 (9th Cir. 1972)	12
<i>United States v. One 1971 Ford Truck</i> , 346 F.Supp. 613 (C.D. Calif. 1972)	12
<i>United States v. Troiano</i> , 365 F.2d 416 (3rd Cir. 1966) <i>cert.</i> <i>denied</i> 385 U.S. 958 (1966)	10
<i>United States v. One 1971 Buick Riviera</i> , 463 F.2d 1168 (5th 715 (1971)	6, 8, 11, 12, 14
<i>Wackenhut Corp. v. Aponte</i> , 266 F.Supp. 401 (D.P.R. 1966) ..	2

Statutes

	PAGE
21 U.S.C. §881(a), subparagraphs (A) and (B)	6
26 U.S.C. §7301	6
28 U.S.C. §1343	2, 5
28 U.S.C. §2281	2, 5
49 U.S.C. §782	6
Controlled Substances Act of Puerto Rico, 24 L.P.R.A. §2102- 2607 (Supp. 1972)	4
24 L.P.R.A. §2512 (a) (4) and (2) (Supp. 1972)	3, 4, 5
24 L.P.R.A. §2510 (Supp. 1972)	10
Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. §1722	3, 4, 5, 16
23 L.P.R.A. §451, 451b, and 451c	3, 5, 18
14A Fla. Stats. Ann. §398.24	6
56½ Ill. Stats. Ann. §712, §1505 (Supp. 1973)	6
18 Mich. Stats. Ann § 18.1070(55) (Supp. 1973)	6



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tration of the Commonwealth of Puerto Rico,

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ON APPEAL FROM THE UNITED STATES DISTRICT
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JURISDICTIONAL STATEMENT

Appellants take this appeal from the judgment of the United States District Court for the District of Puerto Rico, entered on March 29, 1973, declaring unconstitutional and permanently enjoining the enforcement of certain seizure and forfeiture statutes of the Commonwealth of Puerto Rico. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the District of Puerto Rico is not yet reported. A copy of the memorandum opinion and order and a copy of the notice of appeal are attached hereto (Appendix A).

JURISDICTION

This suit was brought under 28 U.S.C. § 1343 to redress alleged deprivation of appellee's rights under the Fifth and Fourteenth Amendments. A three-judge court was convened pursuant to 28 U.S.C. § 2281. This Court has never passed on the applicability of 28 U.S.C. § 2281 to the Commonwealth of Puerto Rico. But district courts have taken Puerto Rico to be a "state" within contemplation of § 2281 ever since shortly after it became a commonwealth. *Mora v. Meijas*, 115 F. Supp. 610 (D.P.R. 1953); *Wackenhut Corp. v. Aponte*, 266 F.Supp. 401 (D.P.R. 1966). See also *Mora v. Meijas*, 206 F.2d 550 (1st Cir. 1953), and *Americana of Puerto Rico, Inc. v. R. Kaplas*, 368 F.2d 431 (3rd Cir. 1966). The judgment of the District Court was entered on March 29, 1973, and notice of appeal was filed in that court on May 8, 1973. Assuming that the three-judge court was properly called, the jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1253. *Pa. Public Util. Comm'n v. Pa. R.R. Co.*, 382 U.S. 281 (1965); *Stainback v. Wo Hock Ke Lok Po*, 336 U.S. 376 (1949); *Rorick v. Bd. of Comm'rs of Everglades Drainage Dist.*, 307 U.S. 208 (1939).

QUESTIONS PRESENTED

1. Whether appellee, nominally lessor but effectively conditional vendor of a yacht seized by and forfeited to the Commonwealth of Puerto Rico, had such a property interest in the yacht as would support a claim of deprivation

of property without due process of law and taking without just compensation.

2. Whether certain confiscation and forfeiture statutes of the Commonwealth of Puerto Rico, in authorizing seizure of property without a prior adversary hearing, deny persons with interests therein due process of law.

3. Whether these statutes must be construed as authorizing the taking without just compensation of Appellee's property, to wit, by denying owners and lienholders who have consented to the use by others of the property seized the right to challenge the forfeiture on the grounds of their own innocence in the wrong for which the property is seized and forfeited.

STATUTES INVOLVED

The pertinent parts of 24 L.P.R.A. § 2512 (a)(4) and (b) (Supp. 1972), 34 L.P.R.A. § 1722 (a)-(e), and 23 L.P.R.A. § 451, 451b, and 451c are set forth in Appendix B.

STATEMENT¹

Appellee ("Pearson") is a New York incorporated and based division of Grumman, Inc., engaged in leasing pleasure yachts. Appellants are the current Superintendent of Police and the Administrator of the General Services Administration of the Commonwealth of Puerto Rico. On March 15, 1971, Pearson leased a yacht to Donovan and

¹ The factual record on which this appeal is based consists of a Stipulation of Facts and the lease and option-to-purchase agreements between Pearson and Lessee, all of which is printed as Appendix C.

Loretta Olson ("Lessee") for a five year term.² The parties simultaneously executed an option contract giving Lessee the right to purchase the yacht on thirty days notice at any time during the lease term, the price diminishing over that period at a depreciation rate equivalent to the monthly rental. At the end of the fifth year the yacht could be purchased for \$1.00. App. C, *infra*, pp. 53-54. In effect, then, Pearson sold the yacht to its "lessee", retaining title until it had received full payment.

On May 6, 1972, Puerto Rican authorities discovered marihuana on the yacht. Under the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2102-2607 (Supp. 1972), possession of marihuana is prohibited. It was stipulated at trial that Pearson was wholly innocent of this violation of law. On July 11, 1972, the yacht was seized by the Superintendent of Police, predecessor in office of appellant Astol Calero-Toledo. 24 L.P.R.A. § 2512 (a)(4) (Supp. 1972) subjects to forfeiture to the Commonwealth of Puerto Rico vessels used to transport controlled substances. Under § 2512 (b) such property is to be seized and forfeited in the manner provided by the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722. App. C, *infra*, pp. 37-41.

Section 1722 requires the Superintendent to serve notice of the seizure "on the owner of the property seized or the person in charge thereof or any person having any known

² The lease agreement provided that Lessee was to use the yacht only for legal purposes; that Lessee, at its expense, was to insure Pearson against loss of the yacht "sustained in any manner whatsoever"; that "forfeiture of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent . . ." [emphasis supplied]; that Lessee had the exclusive right to use and possession of the yacht during the term unless and until default by Lessee, written notice of default by Pearson, expiration of a fifteen day correction period, and exercise by Pearson of its right to terminate; and finally, that the yacht was to be based at the contract date home port of Lessee, specified as a Puerto Rican address, except with the written consent of Pearson. App. C, *infra*, pp. 42-50.

right or interested [sic] therein" within ten days. The Superintendent duly notified Lessee, who was on record with the Division of Marine Operations of the Ports Authority as the owner of the vessel. 23 L.P.R.A. § 451b and 451c require the owner of the vessel who wishes to operate it within the navigable waters of Puerto Rico to file an application for an indentification number with the Authority. Neither the Superintendent nor Lessee notified Pearson, who was not on record with the Ports Authority. App. B, *infra*, pp. 33, 34, 36; App. C, *infra*, p. 39.

Lessee failed to challenge the confiscation within the fifteen day period following service of notice on him as provided by § 1722(a); under § 1722(c), the yacht then became subject to sale at auction or reservation for official use of the Government of Puerto Rico. The Chief of the Office of Transportation, predecessor in office of Edgar R. Balzac, second-named appellant, chose the latter. Pearson did not learn of the seizure until Lessee defaulted and Pearson unsuccessfully attempted, on October 19, 1972, to regain possession of the yacht. App. A, *infra*, p. 22.

On November 6, 1972, Pearson filed suit in the United States District Court for the District of Puerto Rico under 28 U.S.C. § 1343, seeking to compel the return of the yacht, to have 24 L.P.R.A. § 2512(a)(4) and (b) and 34 L.P.R.A. § 1722 declared unconstitutional, and to enjoin their enforcement. Pearson also filed a motion to have a three-judge court convened in accordance with 28 U.S.C. § 2281. On December 21, appellants withdrew their opposition (on the basis of the abstention doctrine) to the convening of the three-judge court, and submitted thereto. App. A, *infra*, p. 20.

In its memorandum opinion and order issued March 29, 1973, the three-judge court ordered Puerto Rico to pay Pearson the appraised value of the yacht, as provided under 34 L.P.R.A. § 1722(d), and issued a permanent injunction against the enforcement of the challenged statu-

tory provisions. The order was based on two holdings. First, the court declared that the challenged statutes, in authorizing seizure without a hearing, permitted a deprivation of Pearson's property without due process. The court claimed support for this proposition in *Fuentes v. Shevin*, 407 U.S. 67 (1972). (The court did *not* hold that Puerto Rico had failed to make reasonable efforts to notify interested parties before the *forfeiture*, specifically indicating that had this issue been reached it would have ruled with appellants. App. A, *infra*, p. 26.) Second, the court held that the statutes effected a taking of Pearson's property without just compensation in that, as the court read the Supreme Court of Puerto Rico's construction of the statutes, they do not allow the owner of seized property to nullify a forfeiture by proving his own innocence in the crime for which the property was seized. *United States v. United States Coin and Currency*, 401 U.S. 715, 721-722 (1971) (hereinafter, *Coin and Currency*), was said to be controlling.

THE QUESTIONS ARE SUBSTANTIAL

Summary of Appellants' Position

Forfeiture is a standard statutory prescription for property used in connection with any of a broad range of violations of criminal law. *See, e.g.*, 21 U.S.C. § 881(a), from which the Puerto Rican statute was copied; 49 U.S.C. § 782; 26 U.S.C. § 7301; 56 1/2 Ill. Stats. Ann. § 712, § 1505 (Supp. 1973); 18 Mich. Stats. Ann. § 18.1070(55) (Supp. 1973); 14A Fla. Stats. Ann. § 398.24. All of these statutes and many others must fall if the decision below is affirmed. None provides notice before seizure, which the district court held due process to require; none of the cited federal statutes by its terms protects innocent owners and lienholders against forfeiture, which the district court held is necessary to avoid taking without just compensation. If

this Court affirms the district court's decision without modification, it will make drafting an effective and constitutional forfeiture statute an impossibility: notice and an adversary hearing would enable the genuinely criminal to remove and hide any property sought to be seized.

By the same reasoning, the foundation of our understanding of the Fourth Amendment's guarantee against "unreasonable searches and seizures" would be undermined: if notice and an adversary hearing must be provided before property whose possessor has already been arrested can be seized, does it not follow that notice and an adversary hearing must be provided before the suspect himself can be arrested? Manifestly the issues involved in this case are substantial.

We respectfully submit that the decision of the court below is, equally clearly, erroneous. Pearson was not deprived of any property interest by the seizure of the yacht from Lessee because it had no possessory interest whatsoever in the vessel at that moment, only a security interest, or at most bare title. Even if Pearson had had a possessory interest, due process has never been construed by this Court to require an adversary hearing before *seizure* in a quasi-criminal proceeding such as forfeiture, and *Fuentes v. Shevin*, cited by the district court as supporting that construction, expressly rejects it. Due process does require an attempt to provide appropriate notice and opportunity for hearing before *forfeiture*; but the challenged statutes make adequate provisions for this, and the district court expressed satisfaction with Puerto Rico's efforts to notify parties with interests in the yacht.

The district court found that Pearson's property was taken without just compensation because it would have been

barred, under Puerto Rican law, from defending in any forfeiture hearing on the grounds of its own innocence. This conclusion is incorrect for four reasons. First, this Court's statement in *Coin and Currency, supra*, at 721-22, that forfeiture statutes "are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise" has never been authoritatively interpreted to require legislative provision of such a defense as a condition to the constitutionality of forfeiture statutes; the weight of the expressions of lower courts is against such an interpretation; and policy and precedent are against such a requirement. Second, even if the district court was correct in finding that any constitutionally sound forfeiture statute must permit the defense, there is ample Puerto Rican precedent for recognizing it without invalidating the statutes. The court below should have followed these precedents to avoid declaring the statutes unconstitutional. Third, depending upon the proper interpretation of another part of the Puerto Rican statutes, Pearson either still has, or once had but lost by inaction, an opportunity to present its defenses to a Puerto Rican court. In neither case can Pearson be found to have suffered any loss from the constitutional infirmity it alleges. Fourth, it would be grossly unjust to permit Pearson to extract from Puerto Rico the appraised value of the yacht. Pearson is already entitled, under its agreement with Lessee, to the insurance proceeds and to an action against Lessee for the balance of the rent due, each of which is presumably at least equal in value to the yacht when seized, as stipulated by Pearson itself. Moreover, whatever opportunities to contest the forfeiture Pearson did have or should have had, it lost them by its own negligent failure to register its interest in the yacht with the Puerto Rican Ports Authority as required by the laws of Puerto Rico.

The Court Below Erred in Holding that Seizure without Notice Deprived Pearson of Property without Due Process of Law

Under Clauses 6 and 11 of the lease, Lessee, not Pearson, had the exclusive right to possession of the yacht at the time of seizure. App. C, *infra*, pp. 45, 47. In Puerto Rico, title to seized property does not pass until forfeiture, *Downs v. Porrata*, 76 P.R.R. 572 (1954). Therefore, the court below erred when it found that Pearson "has been deprived, since [the seizure of the yacht, on] July 11, 1972 of valuable property . . ." App. A, *infra*, p. 21. And it is therefore impossible for the seizure of the yacht to have violated Pearson's rights under the due process clause.

The district court found the statute unconstitutional on its face because it made no provision for notice and a hearing before seizure. The district court cited *Fuentes v. Shevin*, 407 U.S. 57 (1972), as prohibiting such a "deprivation", and concluded that "forfeiture is not one of those extraordinary situations justifying postponing a hearing" [all emphasis supplied unless otherwise indicated]. App. A, *infra*, p. 28. The issue, of course, is whether seizure involves considerations justifying postponing a hearing; Puerto Rico, like other American jurisdictions, does provide opportunity for a hearing before forfeiture. The replevin statutes which were held in *Fuentes v. Shevin* to deprive without due process were described by this Court as follows:

The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. (407 U.S. at 93.)

The Court then went on to say that:

The seizure of possessions under a writ of replevin is entirely different from the seizure of possessions under a search warrant. First, the search warrant is generally issued to serve a highly important governmental need—e.g., the apprehension and conviction of criminals—rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the state will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the state will not abdicate control over the issuance of warrants and that no warrant will be issued without a showing of probable cause. Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search warrant is issued. (Id. at 93-94, n. 30.)

Seizure in a forfeiture proceeding is, like seizure of evidence for a criminal proceeding, subject to the "probable cause" requirement of the Fourth Amendment, not the adversary hearing requirement of the due process clause.³ *United States v. Troiano*, 365 F.2d 416 (8rd Cir. 1966), cert. denied 385 U.S. 958 (1966); *Burge v. United States*, 342 F.2d 408 (9th Cir. 1965), cert. denied 382 U.S. 829 (1965); cf. 24 L.P.R.A. § 2510 (Supp. 1972).

The due process clause does obligate the state to make efforts "reasonably calculated, under all the circumstances,

³ It would be especially absurd to require notice before seizure on the specific facts of this case: is the state to carry the burden of notifying all holders of security interests in a vessel transporting contraband before seizing it?

to apprise interested parties of the pendency of the action [in which their interests will be affected],” *Mullane v. Central Hanover Tr. Co.*, 399 U.S. 306, 314 (1950); *Robinson v. Hanrahan*, 409 U.S. 38 (1972). The challenged statute provides for such notice, and the court below stated that “from the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe that notice to the owner was, in fact, given.” App. A, *infra*, p. 26.

Pearson’s sole serious contention was that the hearing Puerto Rico provides before forfeiture is not meaningful because the defense of innocence of the crime for which the vessel is forfeited is not provided by the statutes. The three-judge court treated this contention as raising the issue of taking without just compensation,⁴ discussed below.

The Court Below Erred in Holding that Pearson Suffered a Taking of Property without Just Compensation

1. The district court reasoned that if forfeiture statutes “are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise,” *Coin and Currency*, *supra*, at 721-2, it is a taking without just compensation to deny one having an interest in property seized, but lacking involvement in the crime for which the seizure was made, the right to preserve his interest against forfeiture by proof of his innocence. In support of this

⁴ An approach which mystifies appellants. No property is being taken “for public use” in the eminent domain sense which is at the core of the just compensation requirement of the Fifth Amendment. The issue here is whether a state may constitutionally apply quasi-criminal sanctions to one who consents to the use of his property by another, who then uses it in the commission of a crime. Whether the legislative power to define and to punish criminal conduct extends this far would seem to raise a question of substantive due process, or perhaps of “excessive fines” under the Eighth Amendment, not of just compensation.

reasoning, the court offered one federal appellate decision and two federal district court decisions. The appellate decision, *McKeehan v. United States*, 438 F.2d 739 (6th Cir. 1971), and one of the district court cases, *Suhomlin v. United States*, 345 F.Supp. 650 (D. Md. 1972), each held that the government was not entitled to forfeiture, given that it had dropped the criminal charges upon which the initial seizure had been made. Thus neither examined the status of the property interest of an innocent party when the possessor of the property seized is in fact guilty of a criminal violation supporting forfeiture. The remaining district court decision, *United States v. One 1971 Ford Truck*, 346 F.Supp. 613 (C.D. Calif. 1972), does proclaim the principle sought to be supported, but only in dictum: the court held that the possessor of the truck was unlawfully in possession of it when apprehended and so, under a statutory exception, the innocent owner's interest could not be forfeited. *Id.* at 619-21. This same exception is judicially recognized in Puerto Rico. *Ochoteco v. Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

This Court has rejected in a long line of cases the principle announced by the court below. *Goldsmith Jr.-Grant Co. v. United States*, 254 U.S. 505 (1921); *Dobbin's Distillery v. United States*, 96 U.S. 395 (1878); *The Palmyra*, 25 U.S. (12 Wheat.) 1 (1827). On the strength of a single district court's dicta the court below believes that *Coin and Currency* overruled these cases. At least two circuit courts of appeal disagree flatly. *United States v. One 1971 Buick Riviera*, 463 F.2d 1168 (5th Cir. 1972); *United States v. One 1967 Ford Mustang*, 457 F.2d 931 (9th Cir. 1972). The latter makes the obvious point that such a decision should be made only by this Court or by the appropriate legislature. *Id.* at 932.

The desirability of the result reached by the district court is by no means self-evident. Of course it would be unjust for an owner to lose his vehicle as a result of a crime committed by one who has stolen it, because the owner bears no causal responsibility for the crime, did not in any way consent to the risk of its occurrence, and cannot be made the medium of any deterrence of future occurrences by the imposition of a forfeiture upon him. No American jurisdiction permits forfeiture in these circumstances. But the owner who consents to the possession and use of his property by another presents a different case. He is a physical cause of the use of that property in a subsequent violation of law by the possessor. He is in a position to know of the risk, to discourage the possessor from committing the crime, and to protect himself against loss.⁵ In one of the decisions which the court below thinks has been overruled, this Court said that in enacting a forfeiture statute a legislature "interposes the care and responsibility of [the owner of property which may be used to facilitate violations of law] in aid of the prohibitions of the law and its punitive provisions. . . ." *Goldsmith, Jr.-Grant Co. v. United States*, 254 U.S. 505, 511 (1921). It is entirely consistent to interpose the owner's responsibility when he has consented to use of the property by another and to refuse to do so when use by another was against his will. Certainly it is a matter of the "severity of punishment," "its efficacy or its futility," matters which this Court has said to be "peculiarly questions of legislative policy." *Gore v. United States*, 357 U.S. 386, 393 (1958).

2. But if justice today insists on allowing the innocent third party defense against forfeiture, in the form sought by Pearson, justice can and should be done without striking

⁵ Pearson is a paradigm example. See lease clauses 4(a), 4(c).

6. App. C, *infra*, pp. 43, 44, 45.

down the Puerto Rican statutes as unconstitutional. There are already two standard exceptions to the long-standing rule that innocence will not save a third party's interest in the seized object, one exempting property used as a common carrier unless the owner or person in charge is a consenting party to the violation, the other exempting conveyances unlawfully in the possession of one other than the owner. *See, e.g.*, 21 U.S.C. § 881(a), subparagraphs (A) and (B). In Puerto Rico these exceptions exist, as the district court remarked, *by virtue of judicial recognition*. App. A., *infra*, p. 24, n. 12: *Metro Taxi Cabs, Inc. v. Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco v. Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

The district court emphasized that the irrelevance to proceedings under Puerto Rican forfeiture statutes of the owner's innocence is "solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico." App. A, *infra* p. 24. The court continued:

We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given the federal forfeiture statutes by the Supreme Court of the United States [before *Coin and Currency*].

The court below was, moreover, confident "that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes." App. A *infra*, p. 21. But if the Puerto Rican Supreme Court were going to reach this result, it is doubtful that it would have done so by declaring the statutes unconstitutional. It is far more likely that the Puerto Rican Supreme Court would have recognized the innocence defense as a gloss on the statutes, just

as it did with the other two innocence exceptions.⁶ *Metro Taxi Cabs, Inc. v. Treasurer, supra*; *Ochoteco v. Superior Court, supra*. The district court below plainly erred when it said "[t]here is no conceivable way in which the Commonwealth courts can construe' the challenged statutes 'to avoid the constitutional issues raised in this case.'" App. A, *infra*, p. 21.

This Court has said:

The cardinal principle of statutory construction is to save and not to destroy. * * * as between two possible interpretations of a statute, by one of which it would be unconstitutional and the other valid, our plain duty is to adopt that which saves the act. Even to avoid a serious doubt the rule is the same. (*N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 130 (1936).)

In this case this principle should apply with special force, since the federal court elected not to abstain to allow the Puerto Rican Supreme Court to construe and pass first on the constitutionality of local statutes.⁷ *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970); *Reetz v. Bozanich*, 397 U.S. 82 (1970); *Bonet v. Texas Co.*, 308 U.S. 463, 471 (1940).

3. The constitutionality of the alleged failure of Puerto Rican law to allow the innocent third party defense in for-

⁶ The Arizona Supreme Court so construed the Arizona vehicle forfeiture statute, even though it had no similar Arizona precedents for its interpretation. *Re One 1965 Ford Mustang*, 105 Ariz. 293, 463 P.2d 827 (1970).

⁷ Faithful adherence to the principle of preservative construction is indispensable to support that narrow limitation of the doctrine of abstention which this Court, on the grounds of duplication of effort and expense, has insisted upon. *England v. Bd. of Medical Examiners*, 375 U.S. 411 (1964). If state (or Commonwealth) officials cannot confidently expect adherence to this principle, they are remiss in their duties when they cooperate, as appellants did, in facilitating federal consideration of the constitutionality of state statutes.

feiture proceedings is an issue that the district court should never even have reached. 34 L.P.R.A. § 1722(a) provides that an interested party has fifteen days in which to challenge a forfeiture if the courts are to have jurisdiction over his complaint. App. B, *infra*, p. 34. It is well established that this period does not run against an interested party until *he himself* has been notified. *Garcia v. Superior Court*, 91 P.R.R. 146 (1964). In 1964 the Supreme Court of Puerto Rico said "we have no quarrel with the theory" of a plaintiff corporation seeking to contest a forfeiture on the grounds that notice was not properly served on it more than one year after notice had been served on its president. *Commonwealth v. Superior Court*, 96 D.P.R. 843, 845, 96 P.R.R. 822, 824 (1969), n.1 [translation from the Spanish text by Fernando E. Agrait-Betancourt, Assistant Secretary, Office of the Attorney General of the Commonwealth of Puerto Rico].

Pearson by its own admission had actual knowledge of seizure of the yacht by October 19, 1972, more than fifteen days before it filed its suit in federal district court. If actual notice satisfies the statutory requirements, then Pearson, like the plaintiff in *Commonwealth v. Superior Court*, *supra*, has lost its chance to air its third party defense through its own inaction.

Presumably this is the basis of the conclusion of the court below that Pearson is time-barred from the Puerto Rican courts. App. A. *infra*, pp. 21-22. If, however, only notice according to the statutory formula will suffice, as *Garcia v. Superior Court*, *supra*, would indicate, then Pearson has not yet been notified and hence has not yet been barred from the courts of Puerto Rico. On either interpretation, Pearson has suffered no damage as a result of the alleged failure of the Puerto Rican statute to satisfy the asserted just compensation standard. As Justice Brandeis said in

his benchmark concurring opinion in *Ashwander v. T.V.A.*, 297 U.S. 288, 347-8 (1935):

The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.

4. According to the district court, Pearson "is entitled to be paid the amount of the appraisal, plus interest." App. A., *infra*, p. 30. The district court cannot be basing its determination of what it would take to *justly* compensate Pearson. Clause 4(a) of the lease required Lessee to furnish Lessor with insurance policies with loss payable to Lessor "insuring Lessor against damage, loss, or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount not less than the replacement value of said Equipment." App. C., *infra*, p. 43. The record contains no pleading, much less any evidence, and there is no reason to assume, that this insurance does not exist or did not fully compensate Pearson.

In addition, clause 4(c) provides that "the damage, destruction, loss, disability or *forfeiture* of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent as provided in this agreement." App. C, *infra*, p. 44. The agreement provided rental payments of \$474.66 per month, which over the full lease term comes to considerably more than the "unit price" specified by Pearson. App. C, *infra*, p. 52. This sum became due no later than October 19, 1972, under clause 7, App. C, *infra*, p. 45, thus "entitling" Pearson to an action in debt for that amount. This cause of action is the compensation properly envisaged by the lease in the event of forfeiture, and Pearson should be held to it.

Finally, if Pearson is now badly placed to seek from Puerto Rico courts the relief it believes itself guaranteed

by the federal Constitution, this is doubly due to its own negligence. Pearson knew — insisted on knowing — that the yacht would be based in Puerto Rico, clauses 9, 12, App. C, *infra* pp. 47-48, but failed to register with Puerto Rico authorities the ownership interest which it claims, contrary to 23 L.P.R.A. § 451b, 451c. A mortgagee who fails to record his interest loses it to a good faith purchaser; Pearson deserves no greater protection when it fails to comply with a state's police measures. Pearson knew by October 19, 1972 that the yacht had been seized, but failed to act within the time provided by Puerto Rican law. This case should present no occasion to reward inattention to local law.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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July 21, 1973

(Appendices Follow)

APPENDIX A

IN THE

United States District Court

FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 1018-72

PEARSON YACHT LEASING COMPANY, Division of
Grumman Allied Industries, Inc.

Plaintiff,

v.

LUIS TORRES MASSA, as Superintendent of Police of the
Commonwealth of Puerto Rico, and MANUEL MARTINEZ
SUAREZ, as Chief of the Office of Transportation of the
Commonwealth of Puerto Rico,

Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiff instituted this suit seeking permanent injunctive relief alleging that the seizure and forfeiture of its property by the Superintendent of Police of the Commonwealth of Puerto Rico (hereinafter referred to as the Superintendent), violated the Due Process Clause, and constituted a taking of property without just compensation, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States. As the action sought to enjoin the enforcement of a state statute on the grounds of its inconsistency with the Constitution of the United

States, a three-judge court was convened.¹ Although the jurisdiction of this Court is not in issue, we do nevertheless find that all prerequisites, both jurisdictional and pseudojurisdictional,² are present and, therefore, conclude that this case is properly before us.

1. The constitutional claim presented is substantial. *Monroe v. Pape*, 365 U.S. 167 (1961); *McNeese v. Board of Education for Community School District No. 187*, 373 U.S. 668 (1963); *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972).

2. The challenged statutes have statewide applicability. *Board of Regents of the University of Texas System v. New Left Education Project*, 404 U.S. 541 (1972).

3. The so-called pseudojurisdictional defenses, such as exhaustion, abstention and comity, do not apply to this case. Exhaustion of state judicial remedies is not a prerequisite to invoking federal jurisdiction seeking constitutional protection, *Marin v. University of Puerto Rico*, 346 F. Supp. 470 (D.P.R. 1972). Insofar as abstention is concerned, we specifically find that the statutes here involved, as well as their predecessors, have been consistently interpreted by

¹ At first, the defendants, represented by the Secretary of Justice of the Commonwealth of Puerto Rico, opposed plaintiff's motion to convene a three-judge court, alleging as sole defense that this was a case calling for the application of the doctrine of abstention. After oral argument on the motion, the Secretary withdrew this defense and filed a motion consenting to the convening of a three-judge court. The District Judge, having found that all jurisdictional pre-requisites had been met, then requested the three-judge court.

² This term is borrowed from *Hobbs v. Thompson*, 448 F. 2d 456 (5 Cir. 1971).

the Supreme Court of the Commonwealth of Puerto Rico³ and, consequently, under the cases of *Wisconsin v. Constantineau*, 400 U.S. 433 (1970); *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970); *Reetz v. Bozanich*, 397 U.S. 82 (1970); *Harman v. Forsseneius*, 380 U.S. 528 (1964), and *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), we need not abstain. We do, nonetheless, believe that the Supreme Court of the Commonwealth of Puerto Rico would have reached the same result as we do here today, in view of the fact that it has followed federal decisions in interpreting local forfeiture statutes.

There is "no conceivable way in which the Commonwealth Courts can construe" the challenged statutes "to avoid the constitutional issues raised in this case." *Rolando Santin Arias v. Examining Board of Refrigeration and Air Conditioning Technicians*, F. Supp. (D.P.R. 1972), Opinion entered November 20, 1972). In rejecting abstention, we have also taken into account the ensuing delay and the prejudice and additional losses that plaintiff would have to bear. Plaintiff has been deprived, since July 11, 1972, of valuable property and of the income produced by it. Also, the nature of the property itself, a yacht, makes it specially susceptible to deterioration and other perils of the sea. But, most compelling, is the fact that under the statutory scheme, the available procedure precludes plain-

³ *General Motors Acceptance Corporation v. Brañuela*, 61 D.P.R. 725, 61 P.R.R. 701 (1943); *Torres v. Buscaglia*, 68 D.P.R. 336, 68 P.R.R. 314 (1948); *Martinez v. Buscaglia*, 69 D.P.R. 438, 69 P.R.R. 406 (1948); *General Motors Acceptance Corporation v. District Court*, 70 D.P.R. 941, 70 P.R.R. 898 (1950); *Metro Taxicabs v. Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952); *Stuckert Motor Company, Inc. v. District Court*, 74 D.P.R. 527, 74 P.R.R. 494 (1953); *Melendez v. Superior Court*, 90 D.P.R. 656, 677-678, 90 P.R.R. 639, 659-660; *Commonwealth v. Superior Court*, 94 D.P.R. 717, 94 P.R.R. 687 (1967).

tiff from challenging the forfeiture in the state courts.⁴ Finally, injunctive relief cannot be granted by the Courts of the Commonwealth of Puerto Rico because of the existence in Puerto Rico of an anti-injunction statute.⁵ Having thus considered these threshold issues, we face the issue on the merits.

Our task has been greatly simplified by the cooperation of the parties in stipulating the facts relevant to the constitutional issues raised. These can be summarized as follows: Plaintiff is in the business of leasing pleasure yachts in the United States and Puerto Rico. On July 11, 1972, one of its yachts was seized by the Superintendent and forfeited to the Commonwealth of Puerto Rico. At the time of seizure, the yacht in question was in the possession of a third party pursuant to a lease agreement, which among other things specifically prohibited lessee from using the leased property for an unlawful purpose. The lessee had been discovered by police agents possessing marihuana while on board the yacht which, under Puerto Rican law is prohibited.⁶ Plaintiff did not know that its property was being used for an illegal purpose and was completely innocent of the lessee's criminal act. After the seizure and within the time allowed by law,⁷ the Superintendent notified lessee. Plaintiff was never notified and,

⁴ Title 34, Laws of Puerto Rico Annotated, Section 1722(a) provides: "The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for availing of the action herein authorized." During oral argument, the Government agreed that under the circumstances of this case, the plaintiff was time barred.

⁵ Title 32, Laws of Puerto Rico Annotated, Section 3524; *Arraras v. Tribunal Superior*, D.P.R., P.R.R., (Decision entered January 27, 1972).

⁶ Controlled Substances Act of Puerto Rico, Title 24, Laws of Puerto Rico Annotated, Sections 2101-2607. This law is similar to the Federal Act, Title 21, United States Code, Section 801, et seq.

⁷ Title 34, Laws of Puerto Rico Annotated, Section 1722(a).

since lessee did not post bond,⁸ the yacht was forfeited to the Commonwealth of Puerto Rico. It was not until plaintiff attempted to recover possession of the yacht after lessee had defaulted in the rental payments that plaintiff learned of its forfeiture.

Plaintiff then instituted this suit seeking permanent injunctive relief alleging that the statutes under which the defendants had seized the vessel violated the Due Process Clause and, also, that its property had been taken for public use without just compensation.⁹ We agree with the plaintiff.

The statutes involved are Title 24, Laws of Puerto Rico Annotated, Section 2512, which is part of the Controlled Substances Act,¹⁰ and Title 34, Laws of Puerto Rico Annotated, Section 1722, better known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act.¹¹ Under Paragraph (a)(4) of the Controlled Substances Act, it is provided that forfeiture shall be had of:

"(4) all conveyances, including aircraft vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [a controlled substance] described in clauses (1) and (2) of this subsection."

Since marihuana is a controlled substance under the Act, it is included in clause (1) of Section 2512, Subsection (a). Thus, possession of marihuana while on board a vessel makes the vessel subject to forfeiture. Subsection (a)(4), like its predecessor, Title 24, Laws of Puerto Rico Annotated, Section 975(f), makes no distinction between con-

⁸ Title 34, Laws of Puerto Rico Annotated, Section 1722(c).

⁹ The yacht was not sold at public auction in the manner provided by Title 34, Laws of Puerto Rico Annotated, Section 1722(c). Nevertheless, the Government has set it aside for official use.

¹⁰ Note 7, *supra*.

¹¹ Title 34, Laws of Puerto Rico Annotated, Section 1721.

veyances owned by the person accused of the illegal act and conveyances owned by a person who is innocent of the possessor's criminal act and is in no way whatsoever connected with it.¹²

In its brief and oral argument, the Commonwealth of Puerto Rico conceded that the owner's innocence is irrelevant to forfeiture proceedings under Section 2512(a) (4), and other Commonwealth of Puerto Rico forfeiture statutes, solely as a result of their interpretation by the Supreme Court of the Commonwealth of Puerto Rico.¹³ We cannot in fairness say that the result is the fault of the Supreme Court of the Commonwealth of Puerto Rico, for it, like many other courts, state and federal, was merely following the construction given to federal forfeiture statutes by the Supreme Court of the United States. See *Goldsmith Jr.-Grant Co. v. United States*, 254 U.S. 505 (1921); *United States v. One Ford Coupe*, 272 U.S. 321 (1926); *Dobbin's Distillery v. United States*, 96 U.S. 395, 399-401 (1878); *The Palmyra*, 12 Wheat. 1, 14, 6 L. Ed. 531 (1827), which cases have since been overruled. Inasmuch as Puerto Rican forfeitures statutes were, in most instances, copied from their federal counterparts, as a matter of judicial construction it was logically expected that they would have been interpreted by the Supreme Court of the Commonwealth of Puerto Rico in like manner.

¹² Title 24, L.P.R.A., Section 2512(a), save for some unimportant differences, is an exact copy of its federal counterpart, 21 U.S.C., Section 881(a). The federal act, however, provides that under certain circumstances, property may not be forfeited. Subparagraph (A) excepts from forfeiture property used as a common carrier unless the owner or person in charge was a consenting party or privy to a violation of this chapter. Subparagraph (B) excepts from forfeiture conveyances which are unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state. Although excluded from 24 L.P.R.A., Section 2512(a) (4), these exceptions have been judicially recognized by the Supreme Court of Puerto Rico in the cases of *Metro Taxicabs Inc. v. Treasurer*, 73 D.P.R. 171, 73 P.R.R. 164 (1952), and *Ochoteco v. Superior Court*, 88 D.P.R. 517, 88 P.R.R. 500 (1963).

¹³ See cases cited in Note 3, *supra*.

The recent decision of *United States v. United States Coin and Currency*, 401 U.S. 715 (1971), ended the fiction that inanimate objects themselves can be guilty of wrongdoing and it condemned, in the words of Blackstone, the seizure of the property of the innocent "as based upon a 'superstition' inherited from the 'blind days' of feudalism."¹⁴ Justice Harlan, writing for the majority in that case, stated:

"We would first have to be satisfied that a forfeiture statute, with such a broad sweep, did not raise serious constitutional questions under that portion of the Fifth Amendment which commands that no person shall be 'deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.'"¹⁵

Even before the advent of *Coin and Currency*, the Court of Appeals for the Sixth Circuit, in the case of *McKeehan v. United States*, 438 F. 2d 739 (1971), rejected the legal fiction that inanimate objects can be guilty of wrongdoing and went on to say that under the Fifth Amendment "the imposition of forfeiture on the appellant is penal and causes an unconstitutional deprivation of personal property "without just compensation."¹⁶ Justice Belaval of the Supreme Court of the Commonwealth of Puerto Rico had so held in writing the dissenting opinion in *Commonwealth v. Superior Court*, 94 D.P.R. 717, 725-807, 94 P.R.R. 687, 695-773 (1967). In 1972, a California District Court, in the case of *United States v. One 1971 Ford Truck*, 346 F. Supp. 613, followed *Coin and Currency* in setting aside the forfeiture of a vehicle used in connection with an illegal transaction, but whose owner was innocent of the criminal act.

¹⁴ *United States v. United States Coin and Currency*, 401 U.S. 715, at 721-723, citing from 1 W. Blackstone, Commentaries, C. 8,300.

¹⁵ *Id.* 401 U.S., at 720.

¹⁶ *Id.* 438 F. 2d at 745.

A similar result was reached in *Suhomlin v. United States*, 345 F. Supp. 650, 655 (D. Maryland 1972).

It is clear that the forfeiture of plaintiff's property under Title 24, Laws of Puerto Rico Annotated, Section 2512(a) (4), and Title 34, Laws of Puerto Rico Annotated, Section 1722, is unconstitutional in that property of a totally innocent person has been taken for government use without just compensation. To this extent, we hold that the forfeiture of plaintiff's yacht is confiscatory and deprives plaintiff of property without just compensation.

Plaintiff also alleges that the procedure under which property is forfeited violates the Due Process Clause. It claims that Title 34, L.P.R.A., Section 1722, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act,¹⁷ does not meet the due process requirements in allowing the seizure of property without a hearing and before judgment, in failing to require the giving of adequate notice, in not providing for an adequate and meaningful hearing, in providing a procedure where the illegal use is presumed and the burden of providing otherwise is on the claimant, and in establishing a procedure with limited defenses. From the record in this case, we are not disposed to rule that the Commonwealth of Puerto Rico did not have reason to believe the notice to the owner was, in fact, given. Because of the result we reach here, this issue becomes academic. We realize that failure to provide proper notice may violate due process standards. *Menkarell v. Bureau of Narcotics*, 463 F. 2d 88, 94 (3 Cir. 1972); *Jackel v. United States*, 304 F. Supp. 993, 999 (S.D.N.Y. 1969).

We do, however, agree with plaintiff that the prehearing,

¹⁷ 34 L.P.R.A., Section 1722, is made applicable to forfeiture for violations of the Controlled Substances Act of Puerto Rico, by virtue of 24 L.P.R.A., Section 2512(b).

prejudgment provision of this statute does not meet due process requirements. Section 1722(a) provides:

"... The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers."

There is no provision whereby the seizure can be contested before it is made. In this limited posture, the statute on its face is unconstitutional. Recent Supreme Court decisions have made it clear that, absent some justification reflecting an important governmental or general public interest, property or property rights may not be seized without first giving the affected party adequate and meaningful hearing. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

The decision to seize property rests solely, as in this case, with the Police Superintendent, and it is only after the seizure has taken place that the owner or person in charge thereof may file a complaint and have his day in court.

We rely not only on the *Fuentes v. Shevin* decision, but on a number of other Supreme Court and three-judge district court cases which have struck down state statutes permitting prehearing or prejudgment seizures and deprivations of property or property rights. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969); *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972); *Bell v. Burson*, 402 U.S. 535 (1971); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Schneider v. Margossian*, 349 F. Supp. 741 (D. Mass. 1972); *Dorsey v. Community Stores Corporation*, 346 F. Supp. 103 (E.D. Wisc. 1972); *MacQueen v. Lambert*, 348 F. Supp. 1334 (M.D. Fla. 1972); *Holt v. Brown*, 336 F. Supp. 2 (W. D. Ky. 1971); *Klim v. Jones*, 315 F. Supp. 109 (N.D. Cal. 1970). In this case, the only argument advanced in

defense of the prehearing seizure is the "need" for efficient control of narcotics. However, we have not been shown in what way prehearing confiscations are going to aid or make more efficient the enforcement of criminal laws. It must be pointed out that in this case the seizure of the yacht took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. Under such circumstances, there is no justification for not including in the statute a provision that would require a hearing prior to seizure. As stated in *Fuentes v. Shevin*, supra, efficiency and economy do not justify obliterating procedural due process:

"The establishment of prompt efficacious procedures to achieve legitimate stated ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular; that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones." *Stanley v. Illinois*, 405 U.S. 645,656 (1972).¹⁸

Forfeiture is not one of those "extraordinary situations" justifying postponing a hearing. *Boddie v. Connecticut*, 401 U.S. 371,379 (1971); nor has the Commonwealth of Puerto Rico claimed it to be such. Outright seizures without opportunity for a prior hearing have been allowed only in a few limited cases. The Court, in *Fuentes v. Shevin*, said.

"* * * Thus, the Court has allowed summary seizures of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure and to protect the public from misbranded drugs and contaminated foods."¹⁹

¹⁸ 405 U.S., at page 90,91, Footnote 22.

¹⁹ 407 U.S. at page 91,92, and cases cited in footnotes 24, 25, 26, 27 and 28.

Finally, the Commonwealth of Puerto Rico has asked this Court that, if we find the plaintiff's constitutional rights have been violated, we declare this forfeiture null and void, but sustain the constitutional validity of the statutes. Were this Court faced with a question of a government official's action in applying the statute, we might be in a position of granting such remedy. But the officials involved herein have acted strictly in accordance with the statutes challenged as they have been construed and, therefore, we cannot escape meeting our judicial burden. The Commonwealth of Puerto Rico in this case was fully aware of the remedy requested and had the option of returning the property confiscated or its appraisal value, thereby taking the matter out of our hands.

For the foregoing reasons, it is hereby declared that Section 2512(a)(4) of Title 24, and Section 1722(a) of Title 34 of the Laws of Puerto Rico are unconstitutional, and an injunction will issue permanently restraining defendants and their successors from enforcing the foregoing provisions insofar as they deny the owner or person in charge of property an opportunity for a hearing, due to the lack of notice, before the seizure and forfeiture of its property and, insofar as a penalty is imposed upon innocent parties.

At the close of its argument, plaintiff pointed out that at present the return of the seized property might not be an adequate remedy, due to the probable deterioration of the vessel. We need not provide a specific remedy, inasmuch as Section 1722(d) of Title 34 provides adequate relief. Plaintiff did stipulate that the appraisal of the property was fair and reasonable and, therefore, is entitled to be paid the amount of the appraisal, plus interest thereon at the rate of 6% per annum, computed from the date of the seizure.

IT IS SO ORDERED.

San Juan, Puerto Rico, March 28, 1973.

s/ **FRANK M. COFFIN**
FRANK M. COFFIN, Chief Judge
U. S. Court of Appeals for the
First Circuit, Presiding

s/ **HIRAM R. CANCIO,**
HIRAM R. CANCIO, Chief Judge
U. S. District Court for the
District of Puerto Rico

s/ **JOSE V. TOLEDO**
JOSE V. TOLEDO, United States
District Judge for the District
of Puerto Rico

IN THE

United States District Court

FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

PEARSON YACHT LEASING COMPANY, Division of
Grumman Allied Industries, Inc.

Plaintiff,

v.

ASTOL CALERO-TOLEDO, as Superintendent of Police of
the Commonwealth of Puerto Rico, and EDGAR R. BALZAC,
as Administrator of the General Services Administration
of the Commonwealth of Puerto Rico

Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE COURT:

Notice is hereby given that the defendants above named,
hereby appeal to the Supreme Court of the United States
from the final order entered in this action on 29 March 1973.

**This appeal is taken pursuant to 28 U.S.C. 1253.
San Juan, Puerto Rico, this 7th day of May, 1973.**

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APPENDIX B
STATUTES INVOLVED

Section 512 of the Controlled Substances Act of Puerto Rico, 24 L.P.R.A. § 2512 (Supp. 1972) provides in pertinent part:

(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

(4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;

(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, know as the Uniform Vehicle, Mount Vessel and Plane Seizure Act sections 1721 and 1722 of Title 34.

Section 2 of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. § 1722, provides in pertinent part:

Whenever any vehicle, mount, or other vessel or plane is seized pursuant to the provisions of Act No. 6 of June 30, 1936, Act No. 220 of May 15, 1948, Act No. 17 of January 19, 1951, Act No. 48 of June 18, 1959 and/or Act No. 2 of January 20, 1956, such seizure shall be conducted as follows:

(a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person

having any known right or interested therein, of the seizure and of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property,

which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

When bond is accepted the subsequent substitution of the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may provide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

(d) In case the vehicle, mount, or vessel or plane

is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

(e) If the seizure is judicially challenged and the court declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal or the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure.

Sections 1, 3, and 4 of the Act of June 14, 1965, 23 L.P.R.A. §451, 451b, 451c, provide in pertinent part:

§451. As used in this chapter, unless the context clearly implies a different meaning:

(e) "Owner" means a person other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation.

§451b. Every motorboat on the waters of the Commonwealth shall be numbered. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such motor boat.

§451c. (a) The owner of each motorboat requiring numbering by this Commonwealth shall file an application for number with the Authority.

APPENDIX C

IN THE

United States District Court

FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 1018-72

PEARSON YACHT LEASING COMPANY, Division of
Grumman Allied Industries, Inc.

Plaintiff,

v.

LUIS TORRES MASSA, as Superintendent of Police of the
Commonwealth of Puerto Rico, and MANUEL MARTINEZ
SUAREZ, as Chief of the Office of Transportation of the Com-
monwealth of Puerto Rico,

*Defendant.***STIPULATIONS**

TO: THE HONORABLE COURT:

COME NOW the parties through their undersigned attorneys and for the purpose of simplifying factual questions and to avoid the necessity of an evidentiary hearing, do hereby enter into the following stipulations:

1. Plaintiff is a New York corporation engaged in the chartering and/or leasing of vessels in the United States of America, including the chartering and leasing of vessels for use in the navigable waters of the Commonwealth of Puerto Rico.

2. The defendant, Luis Torres Massa, is the Superintendent of the Police of the Commonwealth of Puerto Rico and

as such is directly in charge of enforcing the criminal laws of the Commonwealth of Puerto Rico, including the provisions of Title 24, §§ 2101, The Controlled Substances Act of Puerto Rico, June 23, 1971 (24 L.P.R.A. §§ 2101-2607).

3. The defendant, Manuel Martínez Suárez, is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

4. That pursuant to §2512(a), (4) and (b), the defendant, Luis Torres Massa, was empowered to confiscate and subject to forfeiture to the Commonwealth of Puerto Rico "all conveyances, including aircraft, vehicles, and mount or vessels which are used or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the Act".

5. Defendant, Luis Torres Massa, is further empowered to seize any property subject to forfeiture under the provisions of 24 L.P.R.A. § 2512(a)(4) by process issued pursuant to Act of June 4, 1960, as amended, know as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, §§ 1721 and 1722 of Title 34.

6. Pursuant to the powers conferred by 24 L.P.R.A. § 2512(a)(4) and (b), defendant, Luis Torres Massa, through his delegates, policemen and/or other agents, on July 11th, 1972 seized the following property:

1 — Pearson 300, Hull No. 127 with the following equipment:

Bow Rail; Lifelines; 2 Boarding Gates; Stern Rail; Genoa Gear; Sea Hood; H&C Water Pressure System; Shower; Edson Wheel w/compass; Edson Brake; interior Handrails; Ex. Water Tank; 2 additional Opening Ports; Two-Tone Deck; Electric Bilge Pump; Fab-

rio Cushions; Carpets; Curtains; Diesel Engine; Winches; Stove; Roller Furling; Roller Reefing; Salt Water Pump; Cockpit Cushions; Tachometer and 2 Dorado Ventilators; and Mainsail; Jib and Sail Cover.

7. At the time of the seizure of the aforesaid property by the defendant, Luis Torres Massa, the same was in the possession of Donovan Olson and Loretta Olson pursuant to a bareboat charter with plaintiff, copy of which is annexed hereto as "Exhibit A".

8. Pursuant to the provisions of the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 L.P.R.A. §1722(a), the defendant, Luis Torres Massa, through his officers, agents and/or employees served notice of the seizure upon the lessee of the aforesaid property by mailing to him copy thereof at his known address. The notice of seizure was sent to Donovan Olson, who registered with the Ports Authority of the Commonwealth of Puerto Rico and was given a number to operate the vessel in question, as required by the provisions of Title 23 §§ 451, sub-paragraphs (a), (b) and (c).

9. That at the time of the seizure and at the time of service of notice of seizure, the lawful owner of the seized property was Pearson Yacht Leasing Company, a Division of Grumman Allied Industries Inc.

10. That the plaintiff herein has never been notified of the seizure. The plaintiff has never registered or requested a number at the Division of Marine Operations of the Maritime Department of the Ports Authority in the manner and form provided by §451, sub-paragraphs (a) (b) and (c) of Title 23.

11. The property seized is being detained, upon information and belief, at a Police Marine, in Boqueron, Puerto Rico, under the physical custody and control of agents,

policemen and/or employees of defendant Luis Torres Massa.

12. Pursuant to the provisions of 34 L.P.R.A. §1722(b) the property seized by defendant Luis Torres Massa, has been placed under the legal custody of defendant Manuel Martínez Suárez, who is the Chief of the Office of Transportation of the Commonwealth of Puerto Rico.

13. Upon information and belief, defendant, Manuel Marítnez Suárez, pursuant to the powers conferred upon him by Statute 34 L.P.R.A. §1722(b) has appraised the property in question in the sum of \$19,800.00 and intends to hold the same as legal owner thereof.

14. The defendants, Luis Torres Massa, and Manuel Marítnez Suárez, have preceeded under the authority conferred by Act 4 of June 23, 1971 (24 L.P.R.A. §2512(a), (4) (b) and Act No. 39 of June 4, 1960, (34 L.P.R.A. §1722).

15. The plaintiff had no knowledge that its property was being used in connection with or in violation of the Controlled Substance Act of the Commonwealth of Puerto Rico. Defendants concede that plaintiff corporation, its agents, employees and/or representatives were in no way whatsoever involved in the criminal enterprise carried on by lessee, Donovan Olson. (Lessee was accused of using the plaintiff's property on May 6, 1972 to convey, transport, carry and transfer a narcotic drug known as "marihuana", within the ward of La Parguera, in violation of law).

The foregoing facts and issues are stipulated by and between the parties, this day of December, 1972, at San Juan, Puerto Rico.

WALLACE GONZALEZ OLIVER
Attorney General

FELIPE B. MONTALVO
Assistant Attorney General

NELLIE ORTIZ TORRES
Director, General Litigation
Division

WILLIAM A. POWER
Attorney, Department of
Justice
Attorneys for Defendants

By:

NACHMAN, FELDSTEIN, GELPI &
ANTONETTI
Attorneys for Plaintiff

By:

[Appendix C. Continued]**PEARSON YACHT LEASING COMPANY**

Division of Grumman Allied Industries, Inc.

Lease Contract No. 405

LEASE AGREEMENT, hereinafter called the "Lease", made and entered into in Garden City, Nassau County, State of New York, this day of March 1971, by and between Pearson Yacht Leasing Company, Division of Grumman Allied Industries, Inc., a corporation incorporated under the laws of the State of New York, and having its principal office at 600 Old Country Road, Garden City, N. Y., hereinafter called the "Lessor", and Donovan & Loretta Olson, hereinafter called the "Lessee".

WITNESSETH:

1. Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the vessel and accessories, hereinafter called "Equipment", described in Schedule "A", hereto annexed and made a part hereof, upon the terms and conditions contained in this agreement.

2. This Lease is for the term of 60 months from the date of delivery of the Equipment described in the aforementioned Schedule "A", during which term Lessee will pay Lessor as rent for the use of the Equipment in accordance with this agreement and the schedule covered by Schedule "B", hereto annexed and made a part hereof.

Payment of said rent shall commence as of the date of the Lease and shall continue on the same date each and every month thereafter for the term of this Lease. Late payments of rentals shall be charged 1½% monthly on delinquent amounts.

3. (a) Lessee shall furnish at its own cost and expense gasoline or other fuel, lubricants, grease, anti-freeze solution, and replacement parts and supplies appropriate for the use and operation of the Equipment leased hereunder, and shall service, repair and maintain all said Equipment in good condition, but Lessee shall not be responsible for normal wear, tear and depreciation. Lessee is to have the benefit of any manufacturer's warranty as to each Equipment and all accessories thereon.

(b) Lessee shall permit Lessor to inspect any and all said Equipment upon Lessee's premises or elsewhere at any reasonable time, and cooperate fully to facilitate such inspections.

(c) Lessee shall pay any license fees, tolls, taxes levied by federal, state or municipal governments or authorities against said Equipment and also all costs of any inspection required by the state in which Lessee keeps and operates such Equipment.

4. (a) Prior to the delivery of said Equipment, Lessee shall at its own expense furnish the Lessor with insurance policies with loss payable clause to Lessor placed with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damage, loss or destruction of the Equipment under this lease sustained in any manner whatsoever in an amount of not less than the replacement value of said Equipment.

Lessee shall also obtain and furnish Lessor public liability insurance policies with insurance company satisfactory to Lessor with premiums paid, insuring Lessor against damages or claims for personal injuries arising in any manner out of the operation or use of said Equipment. Said policy or policies to contain limits of \$200,000 to \$500,000 and against damages for claims for property damages in an amount not less than Fifty Thousand Dollars (\$50,000).

In case of failure of the Lessee to procure and maintain said insurance and pay the premiums therefor, in addition to any and all other remedies to the Lessor as contained in this Lease, Lessor may effect such insurance, in which event the cost thereof shall be payable by the Lessee as additional rent with the next month's installment of rent.

(b) Lessee hereby assumes all liability for, and agrees to save Lessor harmless against all loss imposed by law resulting from the use or operation, during the term of the Lease hereunder, of Equipment leased hereunder and arising out of death or bodily injury to Lessee or any other or different person or persons and/or damage to property belonging to Lessee or to any other or different person or persons. Lessee agrees to defend at its own expense all claims or suits for damages for the causes hereinbefore set forth and to pay all costs hereof.

(c) The damage, destruction, loss, disability or forfeiture of said Equipment shall not discharge or diminish the obligation of Lessee to pay rent as provided in this agreement, except as may be otherwise mentioned herein.

(d) In the event the leased Equipment is damaged, its repair shall be the responsibility and obligation of the Lessee. In every such instance, Lessor agrees to assign to Lessee any and all rights Lessor may have under insurance policies owned or controlled by Lessor with respect to such damage, as well as any rights Lessor may have to be reimbursed for such damage pursuant to insurance coverage carried by others, provided that the Lessee shall not then be in default of any of the terms and conditions of the lease on its part to be performed.

(e) In the event the leased Equipment is destroyed, stolen, or damaged to such extent that Lessee finds it undesirable to continue its use, all of the Lessor's right, title and interest in the Equipment, together with any and all

rights it may have with respect to such Equipment under insurance carried by others, shall be assigned to Lessee or its designee upon payment by Lessee of the remaining unpaid rental payments as to such Equipment up to the end of the contract term (proportionately adjusted to reflect the deduction in Lessor's financial or carrying costs).

5. Lessee agrees that Lessor may assign all right, title and interest of Lessor in and to such lease agreements, all monies due and to become due thereon, and the Equipment leased hereby, and Lessee agrees, if requested by such assignee, to pay direct to such assignee all monies due and to become due by it on such lease agreements. Lessee may, upon written consent of Lessor, assign its interest in this agreement as to the Equipment described in Schedule "A". All benefits, rights and liabilities then existing shall flow to and be assumed by the assignee, but without relieving the assignor of any liability hereunder.

6. Lessee may use the Equipment leased hereunder at any and all times for any and all legal purposes. Lessor shall not use or suffer or permit any Equipment to be used for any unlawful purpose or for the transportation of any property or material deemed extra hazardous, explosive or inflammable.

7. In case of the Lessee's failure to pay the rentals provided for above, or to fulfill or perform the conditions imposed upon the Lessee by this lease, the Lessor shall give written notice to the Lessee of such default. If the condition is not corrected within fifteen (15) days after date of written notice, the Lessor shall have the right, at its option, to declare all unpaid rentals forthwith to be due and payable and to terminate this agreement and Lessor shall have the right:

(a) To enter any premises where any Equipment may be, with or without the assistance of any person or persons,

and to take, retake and remove the same, including all substituted parts and accessories, without being liable to any suit, action, defense, or other proceedings by the Lessee, and to hold, use, sell, lease or otherwise dispose of any of said Equipment or to keep said Equipment idle, severally or entirely as the Lessor may elect, such election by the Lessor to have no effect upon Lessee's liability under this agreement, or Lessor's rights hereunder and, upon such possession or repossession, all Lessee's rights herein and thereto, shall cease and determine.

(b) If the Lessee, or its agents, shall fail or refuse to deliver, or shall convert or destroy any of the lease property, the Lessor shall have the right, as an alternative in place of subdivision (a) hereof, and in addition to such other remedies as are available to it hereunder, to hold the Lessee and its said agents liable for the value of the said withheld or destroyed property.

(c) If any action shall be brought by either party to this lease for the interpretation thereof, for the recovery of damages resulting from the breach of any term thereof, the prevailing party to such action shall be entitled to reasonable attorney's fees incurred thereby, and said fees shall be included in the judgment awarded in such action to the prevailing party. Lessee does hereby further covenant and agree that all rights and remedies hereunder are cumulative and not exclusive and that a waiver by Lessor of any breach by Lessee of the terms, covenants and conditions hereof, shall not constitute a waiver of future breaches or defaults.

8. If before the commencement of the term of this agreement, or at any time during the term, Lessee shall make an assignment for the benefit of creditors, or shall become insolvent, or if a receiver or trustee of Lessee's property shall be appointed, or if the Lessee (where it is a corporation) shall terminate its existence or take any steps to terminate

its existence, or if a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of effecting an arrangement or composition with Lessee's creditors, then and in each and every such case, this agreement shall terminate forthwith, without any further act or notice by the Lessor, and the Lessor shall immediately have any and all of the rights set forth herein including, but not limited to, paragraphs designated "7" and "12" hereof.

9. The Equipment shall be based at the home port of Lessee, as of contract date, and shall not be moved to a new permanent location without the written consent of the Lessor. Lessee may sublet Equipment to a third party only with the written approval of the Lessor.

10. All said Equipment shall remain personal property of the Lessor and the title thereto shall remain in the Lessor exclusively. Lessee shall keep the Equipment free from any and all liens and encumbrances. Upon termination of the Lease the Equipment shall be returned to Lessor, at Lessee's sole expense and in the same condition as when received by Lessee, less reasonable wear and tear resulting from proper use thereof. All replacement parts, additions and accessories incorporated in or affixed to the Equipment after the commencement of the Lease shall become the property of the Lessor.

11. Lessor agrees together with Lessee that Lessor is the lawful owner of said Equipment free from all encumbrances, and that, conditioned upon Lessee's performing the provisions hereof, Lessee shall use and maintain the Equipment in a rightful manner during said term without interference. The Lessor or any assignee of Lessor is authorized to file any Financial Statements without the signature of the Lessee.

12. Upon termination of this agreement, as provided by

paragraphs numbered "7" and "8", or otherwise, the Lessor, in addition to any or different rights in this agreement provided, shall be entitled to all gains and/or profits prevented and damages sustained, liquidated herein for all purposes including claims and suits against the Lessee's assets in bankruptcy, reorganization or arrangement proceedings, or pursuant to other provisions of the United States Bankruptcy Act, or in any assignment for the benefit of creditors proceedings as follows:

(a) All sums due and unpaid at the time agreement is terminated.

(b) The total of sums which would have become due under the normal operation of this agreement from the date of such termination to the date it would have normally expired had it not been earlier terminated.

In determining said liquidated damages, the parties have made due allowances for the Lessor's investment in buying and/or reconditioning the leased Equipment, the uncertainty of leasing them to others, cost to Lessor for the period during which they may remain idle, or if sold, the uncertainty of the sales price and the Lessor's loss in selling said Equipment, commissions and legal expense to be paid, etc.

13. Nothing contained in this agreement shall affect the Lessor's right to receive payment from a Trustee, Receiver, Debtor or other representative of the Lessee, in bankruptcy, reorganization or arrangement proceedings, or otherwise, or from an Assignee for the Benefit of Creditors, for the use of the Equipment subsequent to the termination of this agreement; provided, however, that the payment received therefrom shall be offset against the liquidated damages provided for in paragraph "12" above.

14. This agreement shall extend to and be binding upon

the successors and assigns of the parties hereto.

15. All notices to be given to Lessor shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessor as follows: Pearson Yacht Leasing Company, 600 Old Country Road, Garden City, N. Y. 11530.

All notices to be given to Lessee shall be given by depositing the same in the United States mail, registered or certified, postage prepaid and addressed to Lessee as follows:

Mr. & Mrs. Donovan Olson
Blvd Monroig AX 36 Levittown,
Cataño, Puerto Rico

16. The Lessor is authorized to file any required financing statement without the signature of the debtor.

17. This agreement, with Schedule "A" and Schedule "B" affixed hereto and made part hereof, constitute the entire agreement and understanding of the Lessor and Lessee, and shall not be amended or altered in any way unless such amendment or alteration be endorsed hereon in writing and signed by the executive officers of both parties or, if the Lessee is not a Corporation, by the Lessee in person.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed, in triplicate, as of the day and year first above written.

LESSOR: PEARSON YACHT
LEASING COMPANY

By ROBERT F. LOW *Director*

LESSEE: DONOVAN &
LORETTA OLSON

By DONOVAN OLSON *Title*
Donovan Olson

By LORETTA OLSON
Loretta Olson

Schedule "A"

This Schedule "A" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

DESCRIPTION

- 1 — Pearson 300 Hull No. 127 with the following equipment:
 BOW Rail; Lifelines; 2 Boarding Gates; Stern Rail;
 Genoa Gear; Sea Hood; H & C Water Pressure Sys-
 tem; Shower; Edson Wheel w/compass; Edson Brake;
 Interior Handrails; Ex. Water Tank; 2 Add'l Opening
 Ports; Two-Tone Deck; Electric Bilge Pump; Fabric
 Cushions; Carpets; Curtains; Diesel Engine; Winches;
 Stove; Roller Furling; Roller Reefing; Salt Water
 Pump; Cockpit Cushions; Tachometer and 2 Dorado
 Ventilators; and Mainsail; Jib and Sail Cover.

LESSOR: PEARSON YACHT
 LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE: DONOVAN &
 LORETTA OLSON

By DONOVAN OLSON
 Donovan Olson *Title*

By LORETTA OLSON
 Loretta Olson

Executed in Triplicate this
 15th day of March, 1971

Schedule "B"

This Schedule "B" is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Rental Charges

<u>Price Basis</u>		<u>Per Unit Monthly</u>
Based on Unit Price of	\$23,983.00	\$474.66*
Less: Down Payment	<u>2,887.00</u>	
Amount Financed	\$21,096.00	

*NOTE: Late payment of rentals are charged $1\frac{1}{2}\%$ monthly on delinquent amounts.

Annual Percentage Rate: 12.50%

LESSOR: PEARSON YACHT
LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE: DONOVAN &
LORETTA OLSON

By DONOVAN OLSON
Donovan Olson *Title*

By LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

Addendum No. 1

This Addendum No. 1 is part of and subject to the Lease Agreement No. 405, between Pearson Yacht Leasing Company, "Lessor", and Donovan & Loretta Olson, "Lessee", dated March 15, 1971.

Lessee is hereby given the right and privilege, at its option, to purchase vehicles described in Schedule "A" of this lease, at the respective option prices for the periods of time indicated below, provided that all rents theretofore due and payable have been paid in full.

<u>Option Period</u>	<u>Percentage Depreciation — Option Period</u>	<u>Option Price Per Unit</u>
End of 1st year		\$18,092.24
End of 2nd year		14,456.72
End of 3rd year		10,239.44
End of 4th year		5,440.40
End of 5th year		1.00

The option to purchase shall be exercisable by Lessee by giving Lessor not less than thirty (30) days notice in writing prior to the expiration of the 60 months term. Lessor covenants and agrees that upon exercise of the option Lessor shall duly execute and deliver to the Lessee all documents necessary and proper to effect transfer of ownership of said vehicles to Lessee, free and clear of all encumbrances and liens (other than encumbrances or liens suffered or permitted by Lessee to become effective thereon) upon payment by the Lessee in cash or certified check of the full balance of said option price and thereupon this lease shall terminate

and no further rents shall become due thereunder with reference to the vehicles leased by the Lessee.

LESSOR:
PEARSON YACHT
LEASING COMPANY

By ROBERT F. LOW
Director

LESSEE:

DONOVAN &
LORETTA OLSON

By DONOVAN OLSON
Donovan Olson *Title*

By LORETTA OLSON
Loretta Olson

Executed in Triplicate this
15th day of March, 1971

